

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

2:24-cv-01941-DJC-JDP

ORDER

CHINO VALLEY UNIFIED SCHOOL DISTRICT, a local educational agency; ANDERSON UNION HIGH SCHOOL DISTRICT, a local educational agency; ORANGE COUNTY BOARD OF EDUCATION, a local educational agency; OSCAR AVILA, an individual; MONICA BOTTS, an individual; JASON CRAIG, an individual; KRISTI HAYS, an individual; COLE MANN, an individual; VICTOR ROMERO, an individual; GHEORGHE ROSCA, JR., an individual; and LESLIE SAWYER, an individual;

Plaintiff,

v.

GAVIN NEWSOM, in his official capacity as Governor of the State of California; ROBERT BONTA, in his official capacity as Attorney General of the State of California; and TONY THURMOND, in his official capacity as California State Superintendent of Public Instruction;

Defendants.

INTRODUCTION

Confronting various forms of discrimination against lesbian, gay, bisexual, transgender, queer, and questioning youth, the California State Legislature enacted Assembly Bill 1955 which, among other things, prohibits California public schools from disclosing to parents instances in which a parent's child goes by a different name or gender pronoun at school. Plaintiffs – a group of parents and several school entities – challenge Assembly Bill 1955, arguing that it unduly restricts parents' ability to gain information about their children's gender identity or gender expression at school in violation of the First Amendment. However, the Court concludes that the Parent Plaintiffs have failed to allege that they themselves will be injured, and so there is no Article III standing for their lawsuit to be heard in federal court. Specifically, the Plaintiff Parents have not indicated that their children have changed or are likely to change their gender identity or gender expression, meaning that there is no reason to think that Assembly Bill 1955 has impacted or will impact their access to information about their children. Moreover, public school entities are barred from challenging state law on constitutional grounds in federal court, such that the School Entity Plaintiffs' claims also cannot proceed. While Plaintiff Parents will be granted the ability to amend their Complaint, as currently stated this Court lacks jurisdiction to hear their suit.

BACKGROUND

The California State Legislature has determined there is a crisis of bullying, harassment, and discrimination against transgender and gender-nonconforming youth. *See, e.g., Hearing on A.B. 1955 Before the A. Comm. on Educ.*, June 26, 2024 (Cal. 2024)¹ at 6–7 (identifying and discussing data on discrimination against transgender and gender nonconforming youth), hereinafter "Hearing Notes"). In response to this pressing societal concern, the California Legislature passed, and

¹ Available at https://aedn.assembly.ca.gov/system/files/2024-06/ab-1955_2.pdf (last accessed April 17, 2025.)

1 Governor Gavin Newsom signed, Support Academic Futures and Educators for
2 Today's Youth Act ("AB 1955" or "Act"). (ECF No. 14, hereinafter "FAC" ¶ 25.) AB
3 1955 makes two notable changes to the California Education Code: First, it requires
4 the California Department of Education to create resources to assist parents and
5 schools in creating supportive environments for lesbian, gay, bisexual, transgender,
6 queer and questioning (LGBTQ) students. Cal. Educ. Code § 217. Second, it
7 prohibits California public schools from adopting or enforcing policies that mandate
8 disclosure of a student's sexual orientation, gender identity, or gender expression to
9 any third party (including parents) without that child's permission. *Id.* § 220.5; see *id.*
10 § 220.3. AB 1955 is aimed at protecting the privacy of a student's decision to go by a
11 different name or to be identified as a different gender, steps which are often referred
12 to as a social transition. See Cal. Educ. Code §§ 220.1, 220.3, 220.5; see also Hearing
13 Notes. These policies are intended to prevent the "forced outing" of a student by
14 school staff, thereby protecting that student's ability to come out as transgender or
15 gender nonconforming to their family when they feel safe and ready to do so. See
16 Hearing Notes at 8. AB 1955 took effect on January 1, 2025. (FAC ¶ 25.)

17 The Plaintiffs in this case consist of several entities: (1) a group of parents
18 ("Parent Plaintiffs") who have children enrolled in California public schools and who
19 are "devout Christians and believe that God created man and woman as distinct,
20 immutable genders" (*id.* ¶¶ 13-21); and (2) Chino Valley Unified School District
21 ("CVUSD"), Anderson Union High School District ("AUHSD"), and Orange County
22 Board of Education ("OCBE"; collectively "LEA Plaintiffs"), all of which are California
23 local educational agencies (LEAs) as defined by California Education Code section
24 56026.3 (*id.* ¶¶ 10-12). Plaintiffs, concerned with the potential application of AB 1955
25 on their students, now bring a facial challenge to the Act, alleging that it: (1) interferes
26 with a parent's fundamental right to control the upbringing and medical care for their
27 children under the Fourteenth Amendment; (2) restricts the parents' First Amendment
28 right to practice their religion; and (3) that AB 1955 is displaced by the Family

1 Educational Rights and Privacy Act ("FERPA"), and therefore, is unenforceable under
 2 the Supremacy Clause of the United States Constitution (U.S. Const., art. IV, cl. 2). (*Id.*
 3 ¶¶ 65-96.) Defendants are Governor Newsom, Attorney General of California Robert
 4 Bonta, and California State Superintendent of Public Instruction Tony Thurmond, all of
 5 whom are sued in their official capacity.

6 **LEGAL STANDARD**

7 A party may move to dismiss a complaint for "lack of subject matter jurisdiction"
 8 under Federal Rule of Civil Procedure 12(b)(1). Challenges to a plaintiff's Article III
 9 standing are properly raised under a 12(b)(1) motion, as standing is required for a
 10 federal court to exercise jurisdiction. *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598
 11 F.3d 1115, 1122 (9th Cir. 2010); see *Nat'l Fed'n of the Blind of Cal. v. Uber Techs., Inc.*,
 12 103 F. Supp. 3d 1073, 1078 (N.D. Cal. 2015). Taking the allegations in the complaint
 13 as true, "the court must determine whether a lack of federal jurisdiction appears from
 14 the face of the complaint itself." *Nat'l Fed'n of the Blind of Cal.*, 103 F. Supp. 3d at
 15 1078. "[The] party invoking the federal court's jurisdiction has the burden of proving
 16 the actual existence of subject matter jurisdiction." *Thompson v. McCombe*, 99 F.3d
 17 352, 353 (9th Cir. 1996); *Chandler*, 598 F.3d at 1122.

18 Standing under Article III of the U.S. Constitution has three basic elements: the
 19 Plaintiff must have suffered: (1) an "injury in fact"; (2) which is fairly traceable to or
 20 caused by the defendant's offensive conduct; and (3) which is likely to be redressed
 21 by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). The
 22 injury in fact element is satisfied by showing that the injury is both (a) concrete and
 23 particularized and (b) actual or - where a plaintiff seeks injunctive relief - imminent.
 24 *Lujan*, 504 U.S. at 564; see *City of L.A. v. Lyons*, 461 U.S. 95, 102 (1983).

25 **DISCUSSION**

26 Plaintiff Parents are unable to satisfy the injury element of Article III standing
 27 and are therefore unable to bring this suit in federal court. Separately, LEA Plaintiffs,
 28 as political subdivisions of the state of California, are barred from challenging state

1 law on constitutional grounds in federal court. Governor Newsom is not a proper
2 defendant here because, as Governor, he is entitled to immunity under the Eleventh
3 Amendment of the U.S. Constitution. Finally, FERPA and AB 1955 do not require
4 conflicting actions on the part of schools, and thus, federalism principles that would
5 displace AB 1955 are not implicated. Finding that there is no standing to bring these
6 claims, the Court does not reach the merits of Plaintiffs' arguments that AB 1955 is
7 otherwise unconstitutional.

8 **I. Plaintiff Parents Are Unable to Satisfy the Injury Element of Article III**
9 **Standing**

10 An inquiry into whether a plaintiff has standing to sue in federal court under
11 Article III is "the threshold question" that a court must assess. *Food & Drug Admin. v.*
12 *All. for Hippocratic Med.*, 602 U.S. 367, 378 (2024). That is, a plaintiff must
13 demonstrate that they have suffered: (1) an injury in fact; (2) that is traceable to or
14 caused by the defendants' offensive conduct; and (3) that can likely be redressed by a
15 favorable judicial decision. *Lujan*, 504 U.S. at 560-61. At issue here is whether
16 Plaintiffs have suffered an injury-in-fact, which requires "'an invasion of a legally
17 protected interest' that is 'concrete and particularized' and 'actual or imminent, not
18 conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (quoting
19 *Lujan*, 504 U.S. at 560). To be concrete, the injury "must be de facto; that is, it must
20 actually exist." *Id.* at 340 (internal quotations omitted). "For an injury to be
21 'particularized,' it 'must affect the plaintiff in a personal and individual way.'" *Id.* at 339
22 (quoting *Lujan*, 504 U.S. at 560 n.1).

23 Here, the Court's inquiry into standing begins and ends with an assessment of
24 whether Plaintiff Parents have suffered an injury in fact. While the Court has no doubt
25 as to the concern that Plaintiff Parents have toward the implementation of AB 1955,
26 Plaintiff Parents have not shown that they have suffered or will imminently suffer any
27 form of harm as a result the Act. For example, Plaintiff Parents do not allege that their
28 own child has gone or goes by a different name at school, that their children's school

1 has deprived the parents of relevant information about their child, or that this is
2 something that is likely to happen in the future. (See FAC ¶¶ 13-21.) Instead, Plaintiff
3 Parents merely allege that they are parents “who believe[] God created man and
4 woman as distinct, immutable genders,” who “object[] on both conscience and
5 religious ground to their public schools withholding information about changes to
6 their child’s gender identity from them” (*Id.*) There is otherwise no indication that AB
7 1955 has been applied to their students.

8 *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013), a seminal case on
9 Article III standing, provides the framework for analyzing Plaintiff Parents’ standing. In
10 *Clapper*, a group of attorneys and human rights workers sued to invalidate the
11 Foreign Intelligence Surveillance Act (“FISA”), a statute that permits the government to
12 surveil certain foreign entities. *Id.* at 401, 406. The plaintiffs alleged that their human
13 rights work required them to communicate with entities likely under U.S. surveillance,
14 exposing the group’s sensitive and privileged discussions to the government. *Id.* at
15 406-07. On review, the Supreme Court noted that plaintiffs could only “speculate and
16 make assumptions,” *id.* at 411, as to whether the statute would apply to their
17 communications, falling far short of the constitutional requirement that the
18 “threatened injury must be certainly impending to constitute injury in fact,” *id.* at 410
19 (quoting *Whitmore v. Ark.*, 495 U.S. 149, 158 (1990)). In other words, the plaintiffs’
20 claims relied on a hypothetical chain of facts, including that: (1) the federal
21 government would target communications with a person whom with the plaintiffs
22 communicated; (2) the federal government would invoke its authority to do so under
23 FISA; (3) that authority would be approved by the Foreign Intelligence Surveillance
24 Court; (4) the federal government would successfully obtain the communications; and
25 (5) the obtained communications would be those that involved the plaintiffs. *Id.* The
26 Supreme Court concluded that this sort of “speculative chain of possibilities does not
27 establish that injury based on potential future” harm, and held that the plaintiffs had
28 not sufficiently satisfied Article III’s requirements for standing. *Id.* at 414. Moreover,

1 the Supreme Court rejected the argument that a failure to confer standing would
2 mean that the constitutionality of the statute could not be challenged, both because
3 “the assumption that if respondents have no standing to sue, no one would have
4 standing, is not a reason to find standing,” and because alternate paths to challenging
5 the statute existed. *Id.* at 421 (quoting *Valley Forge Christian College v. Americans*
6 *United for Separation of Church & State, Inc.*, 454 U.S. 464, 489 (1982).

7 While the Ninth Circuit Court of Appeals has not yet weighed in on whether
8 parents, such as the Plaintiffs in this case, have standing to challenge a policy that has
9 not actually been applied to their children, several other Circuits, relying in part on
10 *Clapper*, have confronted similar fact patterns and have found that parents do not
11 have Article III standing. See *Parents Protecting Our Child, UA v. Eau Claire Area Sch.*
12 *Dist., Wis.* (“*Parents Protecting Our Child*”), 95 F. 4th 501 (7th Cir. 2024), *cert. denied*,
13 145 S. Ct. 14 (2024); see also *John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*,
14 78 F. 4th 622 (4th Cir. 2023), *cert. denied sub nom. Jane Parents 1 v. Montgomery*
15 *Cnty. Bd. of Educ.*, 144 S. Ct. 2560 (2024). While not binding on this Court, these
16 cases are instructive.

17 In *Parents Protecting Our Child*, the Seventh Circuit affirmed a district court
18 order that found parents of students in public schools lacked Article III standing to
19 challenge a school policy that guided staff to obtain student permission before
20 disclosing a student's gender non-conformity or transgender identity with the
21 student's parent or guardian. 95 F. 4th at 503-05. In that case, a school district policy
22 intended to “foster inclusive and welcoming environments” established “guidelines”
23 for schools to follow “to address the needs of transgender, nonbinary, and/or gender
24 non-conforming students.” *Id.* at 503. The guidelines provided for the creation of a
25 student “Gender Support Plan” for certain students, which would be an official school
26 document available to parents on request. *Id.* at 503-04. The guidelines also
27 acknowledged that “some students might not [be] open at home for reasons that may
28 include safety concerns or lack of acceptance,” and that “[s]chool personnel should

1 speak with the student first before discussing a student's gender non-conformity or
2 transgender status with the student's parent/guardian." *Id.* at 503.

3 Analyzing standing, the Seventh Circuit recognized the parents' legitimate
4 worries about being left "in the dark if their children wish to explore their gender
5 identity or begin to socially transition to a different gender at school" and the general
6 erosion of parents' roles in "making major life decisions for their children." *Id.* at 503-
7 04. But, the court deemed that "expressions of worry and concern do not suffice to
8 show that any parent has experienced actual injury or faces any imminent harm
9 attributable" to the school policy. *Id.* at 506 ("Our role is limited to awaiting concrete
10 disputes between adverse parties."). For example, none of the parents had alleged
11 that their children had questioned their gender identity or otherwise sought support
12 or guidance under the school district's policy. *Id.* at 504. The Seventh Circuit
13 reasoned that, similar to the plaintiffs in *Clapper*, there was no indication that the
14 policy had or would apply to the parents' children, nor could the parents demonstrate
15 how the policy would concretely impact them or their children in a negative way in the
16 imminent future, and thus, there was no Article III standing. *Id.* at 504-06 (affirming
17 the district court's finding that the alleged harm is "dependent on a 'chain of
18 possibilities' too speculative to establish Article III standing").

19 Here, as in *Clapper* and *Parents Protecting Our Child*, Plaintiff Parents are not
20 able to show injury beyond a speculative chain of events that have not yet, nor have
21 been imminently shown to, occur. To find Article III standing for Plaintiff Parents'
22 claim, the Court would need to accept as true a series of hypothetical events,
23 specifically that: (1) a child of Plaintiff Parents is transgender or gender
24 nonconforming; (2) that student has informed a school staff member of their wishes to
25 be identified by a different name or pronoun; (3) that student did so without telling
26 their parent; and (4) that parent has been denied that information by the school.
27 Under *Clapper*, the Court is unable to do so. *See Clapper*, 568 U.S. at 410-11. Just
28 like the plaintiffs in *Parents Protecting Our Child*, Plaintiff Parents rely on the fear of a

1 policy that has not yet impacted or been shown to imminently impact their children.
2 Because Plaintiff Parents cannot demonstrate that there is any actual harm that would
3 occur, they cannot satisfy Article III's standing requirements.

4 It is true that several other federal courts have addressed similar policies and
5 found that the plaintiffs satisfied federal standing requirements, leading the courts to
6 reach the merits of the underlying dispute. But those cases – *Mirabelli v. Olson*, 691 F.
7 Supp. 3d 1197 (S.D. Cal. 2023), *Regino v. Staley*, No. 23-16031, 2025 WL 1007045
8 (9th Cir. Apr. 4, 2025), *Foote v. Ludlow School Committee*, 128 F. 4th 336 (1st Cir.
9 2025), and *Littlejohn v. School Board of Leon County, Florida*, No. 23-10385, 2025 WL
10 785143 (11th Cir. Mar. 12, 2025) – are distinguishable from the case at hand. In those
11 cases, the plaintiffs satisfied Article III standing requirements because the policy had
12 concretely affected them, either because they were teachers who had to comply with
13 the policy after a student started to socially transition at school or because they were
14 parents who were not informed by the school of their child's desire to socially
15 transition.

16 For example, in *Mirabelli*, the plaintiffs were teachers with religious beliefs that
17 "communications with a parent about a student should be accurate." 691 F. Supp. 3d
18 at 1203. At the start of the school year, in compliance with a school policy that
19 prohibited staff from sharing a student's decision to go by a different gender identity
20 while at school, the plaintiff teachers "received emails from school staff with a list of
21 students with student-preferred names and pronouns." *Id.* at 1205. The circulated list
22 included at least one instruction to teachers to use a specific pupil's birth name when
23 calling home, which differed from the name and pronouns the student went by at
24 school. *Id.* The list further provided that the specified pupil's "[d]ad and stepmom are
25 NOT aware" that the pupil went by the different name and pronouns at school. *Id.* By
26 mandating school staff to follow the pupil's wishes regarding what name to be called,
27 the plaintiff teachers were required to comply, against their wishes, with the policy. *Id.*
28 at 1205. And in *Regino*, a case involving a comparable policy, the parent plaintiff's

1 child went by a different name at school, which was not disclosed to the child's
2 mother. No. 23-16031, 2025 WL 1007045, *3 (9th Cir. Apr. 4, 2025). As in *Mirabelli*,
3 the parent plaintiff had standing to bring the case in federal court because the
4 school's policy had impeded her from receiving information about her child's gender
5 identity. See *id.* In other words, in both *Mirabelli* and *Regino*, the school policy had
6 actually been applied. But here, Plaintiffs have not alleged that the policy has been
7 invoked against any of their student children, nor is any plaintiff a teacher who has
8 been forced to comply with AB 1955.

9 Two recent circuit court decisions involving similar policies that restrict a school
10 staff member from informing a parent of a student's desire to go by a different name
11 or pronoun are similarly distinguishable. In both those cases, the parent plaintiffs had
12 alleged that their own student had expressed interest in going by a different name or
13 using different gender pronouns while at school. *Foote*, 128 F. 4th at 341 (noting that
14 the plaintiff's child was genderqueer and went by a different name and pronouns than
15 those used at home with their parents); *Littlejohn*, 2025 WL 785143, at *1 (noting that
16 the plaintiff's child asked to go by a different name and pronouns than those used at
17 home with their parents). As in *Mirabelli* and *Regino*, those cases differ from the one
18 before the Court because Parent Plaintiffs here do not allege that their own child has
19 acted in a way – i.e., requesting to by a different name or pronoun – that would
20 implicate AB 1955's restriction on informing parents of their children's decision to use
21 a different name or pronouns. (See FAC ¶¶ 13-21.)

22 Plaintiff Parents are unable to show they have suffered an injury in fact, and
23 therefore fail to satisfy the first element of Article III standing. Accordingly, the Court
24 cannot consider the merits of Plaintiff Parents' Fourteenth Amendment claim.

25 **II. There is No Lesser Standing Requirement for Parents' Free Exercise** 26 **Claims**

27 Plaintiff Parents also bring a challenge under the Free Exercise Clause of the
28 First Amendment against AB 1955, contending that the Act constricts the parents' free

1 exercise of religion. (FAC ¶¶ 73-78; see ECF No. 24, Opposition, hereinafter “Opp’n,”
2 at 14-16.) Specifically, they allege that AB 1955 allows schools to socially transition
3 their students, violating the parents’ belief that “God created man and woman as
4 distinct, immutable genders.” (FAC ¶¶ 13-21.) Plaintiff Parents argue that they have a
5 lower burden to meet Article III standing requirements for their Free Exercise claim.
6 (See Opp’n at 14, citing *Cal. Pro-Life Council, Inc. v. Getman* (“*Cal. Pro-Life Council*”),
7 328 F.3d 1088, 1094 (9th Cir. 2003) and *Ariz. Right to Life Pol. Action Comm. v.*
8 *Bayless* (“*Ariz. Right to Life*”), 320 F.3d 1002, 1006 (9th Cir. 2003). As the Ninth Circuit
9 has observed “when the threatened enforcement effort [of an Act] implicates First
10 Amendment rights, the [Court’s] inquiry tilts dramatically toward a finding of
11 standing.” *Ariz. Right to Life*, 320 F.3d 1002, 1006 (9th Cir. 2003) (internal quotations
12 omitted). However, that line of cases is inapplicable here.

13 While it is true that “Constitutional challenges based on the First Amendment
14 present unique standing considerations,” *id.*, that rule has only been applied in the
15 context of the Free Speech Clause.² See *Cal. Pro-Life Council*, 328 F.3d at 1094
16 (“*Particularly in the First Amendment-protected speech context, the Supreme Court*
17 *has dispensed with rigid standing requirements.*”) (emphasis added); see also *Ariz.*
18 *Right to Life*, 320 F.3d at 1006 (discussing First Amendment freedom of speech cases).
19 Indeed, the rationale underlying this relaxed standing requirement is specific to a
20 longstanding desire to avoid chilling protected speech. “In an effort to avoid the
21 chilling effect of sweeping restrictions, the Supreme Court has endorsed what might
22 be called a ‘hold your tongue and challenge now’ approach rather than requiring
23 litigants to speak first and take their chances with the consequences.” *Cal. Pro-Life*
24 *Council*, 328 F.3d at 1094 (quoting *Ariz. Right to Life*, 320 F.3d at 1006.). Plaintiffs
25 point to no caselaw extending this line of cases into the Free Exercise context, and the
26

27 ² The parties were given leave to submit additional authority on this issue. (ECF No. 29.) Plaintiffs did
28 not provide any additional authority to support their assertion that there is a preference in favor of
standing for First Amendment religious practice claims.

1 Court declines the invitation to relax traditional Article III standards in this context.

2 Even if the Court were to turn to the cases cited by Plaintiff Parents to extract an
3 applicable lower bar to First Amendment Free Exercise claims, those cases do not
4 provide any standard that would help Plaintiff Parents here. (See Opp'n at 14.) For
5 example, in *California Pro-Life Council, Inc. v. Getman*, the Ninth Circuit reaffirmed that
6 a party – in a First Amendment Free Speech context – could establish standing to
7 challenge a proscriptive policy if that party faced a “genuine threat of imminent
8 prosecution.” 328 F.3d at 1094, quoting *Thomas v. Anchorage Equal Rights Comm’n*,
9 220 F.3d 1134, 1138 (9th Cir. 2000). To demonstrate a threat of imminent
10 prosecution, a party could point to whether it had a concrete plan to violate the
11 statute in question, whether the prosecuting authorities had previously communicated
12 a warning to initiate proceedings against the party, or a history of past prosecution or
13 enforcement under the challenged statute. *Id.* But if the Court were to use that test
14 here, Plaintiff would not be able to demonstrate that any of those factors applied. It is
15 not possible for Plaintiff Parents to violate AB 1955 because it is applied by school
16 administrators, rather than parents. Nor have Plaintiff Parents pointed to any threat of
17 proceedings against them or a past history of prosecution.

18 Similarly, *Arizona Right to Life Political Action Committee v. Bayless*, 320 F.3d
19 1002 (9th Cir. 2003) – another First Amendment Speech case relied on by Plaintiff
20 Parents – does not provide any basis for standing here. In that case, the Ninth Circuit
21 held that a party could satisfy standing requirements to challenge a policy or statute
22 restricting speech if the party could show that it intended to engage in a course of
23 conduct that would implicate the restrictive policy and that there was a credible threat
24 of the challenged provision being invoked in response. *Ariz. Right to Life*, 320 F.3d at
25 1006. But again, Plaintiff Parents are not able to violate AB 1955, nor have they
26 identified the possibility of any form of proceedings being initiated against them
27 under the statute.

28 In other words, even if the Court were to apply the cases relied on by Plaintiff

1 Parents – and to be clear, the Court does not believe that those cases apply – Plaintiff
 2 Parents would still lack standing to bring their claims in federal court.

3 **III. LEA Plaintiffs Lack Standing Because They Are Political Subdivisions of** 4 **the State**

5 Political subdivisions of a state lack standing to challenge state law on federal
 6 constitutional grounds. *City of San Juan Capistrano v. Cal. Pub. Util. Comm’n*, 937
 7 F.3d 1278, 1280 (9th Cir. 2019). California public school districts (e.g., CVUSD and
 8 AHUSD), county offices of education, and local boards of education (e.g., OCBE) are
 9 political subdivisions of the state for purposes of assessing standing to sue against the
 10 state. *Sato v. Orange Cnty. Dep’t of Educ.*, 861 F.3d 923, 934 (9th Cir. 2017).

11 LEA Plaintiffs are California public school districts and a local board of
 12 education. They seek, separate from Plaintiff Parents, to sue California state officials in
 13 their official capacity, to enjoin the implementation of a state law on federal
 14 constitutional grounds. Binding Ninth Circuit precedent clearly dictates they cannot
 15 do so. *See San Juan Capistrano v. Cal. Pub. Util. Comm’n*, 937 F.3d at 1280, n.1 (9th
 16 Cir. 2019) (“We have held that . . . a school district [] lack[s] standing to sue various
 17 state officials.”). In light of controlling Ninth Circuit case law restricting the very types
 18 of claims LEA Plaintiffs seek to advance, LEA Plaintiffs’ claims cannot move forward.

19 **IV. Governor Newsom is Entitled to Eleventh Amendment Immunity**

20 Under the Eleventh Amendment and broader notions of sovereign immunity,
 21 states and state agencies are immune from suit in federal court. *Brooks v. Sulphur*
 22 *Springs Valley Elec. Co-op.*, 951 F.2d 1050, 1053 (9th Cir. 1991). An exception to this
 23 principle is the *Ex parte Young* doctrine, which allows suits for prospective relief
 24 against state officials acting in their official capacity if the official has “some
 25 connection” to the alleged injury. *Mecinas v. Hobbs*, 30 F. 4th 890, 903 (9th Cir.
 26 2022) (internal quotations omitted). The connection must extend beyond a merely
 27 “supervisory” role and should be “fairly direct.” *Snoek v. Brussa*, 153 F.3d 984, 986
 28 (9th Cir. 1998).

1 Plaintiffs allege that Governor Newsom “enjoys significant authority over State
 2 education.” (Opp’n at 22.) Plaintiffs point out that Governor Newsom appoints
 3 members of the State Board of Education, which is responsible for setting state
 4 academic standards, curriculum frameworks, instructional materials, assessments,
 5 funding allocations, federal compliance, and accountability. (*Id.* at 22-23.) But
 6 appointment of State Board of Education members is not a “fairly direct” role; Plaintiffs
 7 have not shown, or even alleged, that Governor Newsom directs State Board
 8 members in a way connected to Plaintiffs’ alleged injury. For example, they have not
 9 indicated that Board members follow Governor Newsom’s orders, or that Board
 10 members are bound to a specific policy platform created by the Governor. Because
 11 Plaintiffs have not substantiated a fairly direct connection between Governor Newsom
 12 and AB 1955, their argument that he lacks Eleventh Amendment immunity fails, and
 13 he must be dismissed as a defendant. *See Ass’n des Eleveurs de Canards et d’Oies du*
 14 *Quebec v. Harris*, 729 F.3d 937, 943 (9th Cir. 2013) (a governor’s general duty to
 15 enforce California law does not dissolve his immunity under the Eleventh
 16 Amendment).

17 **V. AB 1955 and FERPA Do Not Conflict**

18 FERPA guarantees the rights of parents to “inspect and review” their child’s
 19 education records. 20 U.S.C. § 1232g(a)(1)(A). As relevant here, AB 1955 prohibits
 20 public schools from adopting or enforcing policies that mandate disclosure of a
 21 student’s sexual orientation, gender identity, or gender expression to any third party
 22 (including parents) without that child’s permission. Cal. Educ. Code § 220.5; *see id.*
 23 § 220.3.

24 Plaintiffs allege that FERPA and AB 1955 are in conflict because FERPA requires
 25 that any school record pertaining to a child’s gender would need to be viewable by
 26 parents upon request. (FAC ¶¶ 79-86; Opp’n at 32-33.) This argument fails. AB 1955
 27 has an explicit carveout for any conflict with federal law (i.e., FERPA). The text of both
 28 California Education Code sections 220.3 and 220.5 dictates that the statutes apply

1 “unless otherwise required by state or *federal law*.” Cal. Educ. Code § 220.3(a);
 2 (emphasis added); *id.* § 220.5(a) (emphasis added). Because FERPA and AB 1955 do
 3 not conflict, AB 1955 is not preempted under principles of federalism. See *CDK Glob.*
 4 *LLC v. Brnovich*, 16 F. 4th 1266, 1274 (9th Cir. 2021) (“In the absence of
 5 irreconcilability between state and federal law, there is no conflict preemption”)
 6 (internal quotations omitted).

7 **VI. Leave to Amend**

8 A court granting a motion to dismiss a claim must decide whether to grant
 9 leave to amend. Leave to amend should be “freely given” where there is no “undue
 10 delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice to
 11 the opposing party by virtue of allowance of the amendment, [or] futility of [the]
 12 amendment . . .” *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Eminence Cap., LLC v.*
 13 *Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the *Foman* factors as those to
 14 be considered when deciding whether to grant leave to amend). But, dismissal
 15 without leave to amend may be proper if it is clear that the complaint could not be
 16 saved by any amendment. *Intri-Plex Techs., Inc. v. Crest Grp., Inc.*, 499 F.3d 1048,
 17 1056 (9th Cir. 2007; *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir.
 18 1989) (“Leave need not be granted where the amendment of the complaint . . .
 19 constitutes an exercise in futility . . .”).

20 Here, the Court finds that it may be possible for Parent Plaintiffs to allege
 21 sufficient facts to establish Article III standing, and allowing Parent Plaintiffs an
 22 opportunity to amend at this early stage of the litigation would not be prejudicial to
 23 Defendants. However, the Court also concludes that LEA Plaintiffs’ standing defects
 24 cannot be cured by amendment because controlling caselaw unambiguously
 25 prohibits their claims from advancing. Nor can Plaintiffs allege sufficient facts to
 26 support suit against Governor Newsom. Accordingly, Parent Plaintiffs are granted
 27 leave to submit a Second Amended Complaint within 21 days. LEA Plaintiffs are
 28 denied leave to amend, and their claims are dismissed with prejudice, as are the

1 claims against Governor Newsom.

2 **CONCLUSION**

3 In accordance with the above, IT IS HEREBY ORDERED that Defendant's Motion
4 to Dismiss (ECF No. 22) is GRANTED. Parent Plaintiffs' claims are DISMISSED
5 WITHOUT PREJUDICE and Parent Plaintiffs may file a Second Amended Complaint
6 within 21 days; LEA Plaintiffs' claims, and all claims against Governor Newsom, are
7 DISMISSED WITH PREJUDICE.

8
9 IT IS SO ORDERED.

10 Dated: **April 17, 2025**


Hon. Daniel J. Calabretta
UNITED STATES DISTRICT JUDGE

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